

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 8261 of 2014

Date of Decision: 16.05.2016

Sri Prem Properties (P) Limited

... Petitioner(s)

Versus

Sandeep and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. V. Ramswaroop, Advocate
for the petitioner(s).

Mr. N.D.Achint, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present petition under Article 227 of the Constitution of India for setting aside order dated 11.11.2014, passed by learned Civil Judge (Junior Division), Gurgaon, whereby application filed by the petitioner/plaintiff under Order 6 Rule 17 CPC was dismissed mainly on the ground of limitation.

As per petitioner, on the basis of agreement of sale dated 12.7.1996, executed by mother of defendants, she agreed for sale of the suit property to the plaintiff. The entire sale consideration was paid by the plaintiff to Smt. Bimla, mother of the defendants as defendants

were minor on the date of agreement. Plaintiff has filed civil suit so as to protect its possession over the suit property. Later on, defendants refused to perform their part of agreement on 15.10.2011 and also tried to interfere into possession of suit property of the plaintiff. An application has been filed for amendment of plaint so as to claim the relief of specific performance of agreement and the said prayer was declined by the Court below vide impugned order.

Respondents contested the application on the ground that there was no privity of contract between the plaintiff and mother of the defendants and she had never entered into alleged agreement of sale dated 12.7.1996. An application for amendment of plaint was not filed within period of limitation.

The Court below, after considering the pleas taken by learned counsel for the parties, dismissed the application for amendment of plaint on the ground of limitation.

Learned counsel for the petitioner submitted that learned trial Judge fell in error while coming to the conclusion that relief of specific performance was being claimed, which was already available to the plaintiff at the time of filing of the suit. Learned counsel for the petitioner also submitted that the Court below fell in error as petitioner is in possession of the suit land on the basis of payment of entire sale consideration on the date of agreement of sale and the cause of action to file the present application had arisen for the first time on 15.10.2011 and thereafter, suit was filed on 12.12.2011 and as such application was filed well within the period of limitation. In fact, the cause of action in

such like cases arises only on the date of refusal and the case of petitioner is covered under the provisions of Article 54 of the Limitation Act, 1963 (hereinafter referred to as "the Act"). But the Court below has completely ignored this fact while deciding the application and the impugned order be set aside by accepting the present petition.

Learned counsel for the petitioner submitted that the case of petitioner is hit by Order 2 Rule 2 CPC and different cause of action gives rise to different suits and even prayer for amendment of pleadings. On this point, reliance was placed upon the judgments rendered by the Hon'ble Apex Court in ***Rathnavathi & Another v. Kavita Ganashamdas (2015)5 SCC 223, Inbasagaran & Another v. S. Natarajan (Dead) through LRs, Vidyabai & Others v. Padmalatha & Another (2009)2 SCC 409, Ragu Thilak D. John v. S. Rayappan & Others (2001)2 SCC 472 and Narayan v. Babasaheb & Others 2016 IV AD (S.C.) 281*** and the view taken by this Court in ***Darshan Kaur v. Pardeep Kumar 2012 SCC Online P&H 17055 and Pritam Kaur v. Smt. Puneeta Sharma and Another 2013 SCC Online P&H 17298.***

Learned counsel for the respondents submitted that as per plaint filed in the civil suit titled as "Sri Prem Properties P Ltd. v. Shri Sandeep and Another", which was a suit for permanent injunction and mandatory injunction, the cause of action had already arisen and the Court below has rightly dismissed the application for amendment of plaint and present petition is liable to be dismissed.

Having considered the submissions made by learned

counsel for the parties and appraisal of the record of the case and the impugned order, this Court is of the considered view that agreement of sale dated 12.7.1996 was executed between the parties and as per agreement. The complete payment of ₹ 2,06,000/- was received vide cheque No. 886107 dated 12.7.1996. The possession was handed over to the petitioner as complete payment was made. The sale deed was to be executed in anybody's name on the asking of the petitioner. That way, limitation period for filing such like suit for specific performance was on the date when his rights of ownership are threatened and the period of limitation is not taken to be three years from the date of agreement. The Court below fell in error while dismissing the application under Order 6 Rule 17 CPC on the ground that application for amendment was not filed within period of limitation.

In the present case, petitioner had initially filed suit for permanent injunction because his possession was threatened at the hands of respondents and subsequently respondents refused to perform their part of agreement on 15.10.2011 and at that time also, they tried to interfere in the settled possession of the suit land. On that basis, application for amendment of plaint, so as to convert the suit for permanent injunction into suit for specific performance, was filed. But the Court below has dismissed the application mainly on the ground of limitation as well as on the ground that this relief was available with the plaintiff at the time of filing of the suit for permanent injunction and at that time, suit for specific performance should have been filed. But that is against facts of the case in hand.

As regard to the plea taken by learned counsel for the respondents that present case is hit by Order 2 Rule 2 CPC in view of the judgment rendered by Hon'ble the Apex Court in ***Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Regd.) v. Ramesh Chander and Others 2011 AIR (SC) 41***, the same are distinguishable from the facts of the case in hand primarily on two grounds, firstly that plaintiff was in possession of the suit property on the basis of agreement of sale dated 12.7.1996 and possession was handed over to the plaintiff as a person in possession of the property on the basis of agreement of sale and that too having made complete payment under the agreement. Secondly, as per agreement itself, respondents were to obtain permission for the minors from the Court because agreement was executed on behalf of Geeta and Sandeep through Smt.Bimla Devi being mother and natural guardian of the minors.

As regard to point of limitation in such like cases, the matter was considered by the Hon'ble Apex Court in ***Rathnavathi's case (supra)***, wherein plaintiff had paid the entire sale consideration to the defendants and plaintiff was placed in possession of the suit land. The threat was advanced to the plaintiff in the year 2000 when defendant tried to alienate the suit property and Hon'ble the Apex Court observed that cause of action to file the suit for specific performance had arisen on that day only and not within three years from the date of agreement. More so, as per the provisions of Article 54 of the Act, which prescribed the period of limitation for filing suit for specific

performance, reads as under:-

54	For specific performance of a contract	Three years	The date of fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
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Mere reading of Article 54 of the Act would show that if the date is fixed for performance of the agreement, then non-compliance to the agreement on the date would have a cause of action to file a suit for specific performance within three years from the date so fixed. However, when no such date is fixed, limitation of three years to file a suit for specific performance would begin when the plaintiff has noticed that the defendant has refused the performance of the agreement. The case in hand admittedly does not fall in the first category of Article 54 of the Act because as observed supra, no date was fixed in the agreement for its performance. The case would, thus, be governed by the second category, when plaintiff had noticed that performance was refused.

In the present case, plaintiff came to know on 15.10.2011 that owners of the suit property were trying to dispossess them from the suit property on the strength of their ownership over the property. This event, therefore, is to be taken as starting point of refusal to perform the agreement by the defendants, thereby giving cause of action to file the suit and in the present case moved an application for amendment of the plaint. However, the Court below has not considered these aspects while passing the impugned order. Such a view was taken by Hon'ble the Apex Court in *Inbasagaran's case (supra)* that

perusal of pleadings in the two suits and cause of action mentioned therein are to be looked into if in previous suit, relief of injunction has been sought on the basis of imminent threat of dispossession to the plaintiff from the suit property, whereas subsequent suit for specific performance against vendor on the basis of agreement of sale, then provisions of Order 2 Rule 2 CPC shall not be applicable.

In view of above, impugned order dated 11.11.2014 is legally not sustainable and the Court below has not considered the aforesaid aspects while passing the impugned order. Hence, present petition is hereby accepted and impugned order stands set aside.

(Shekher Dhawan)
Judge

May 16, 2016
"DK"